

# Order

**Michigan Supreme Court  
Lansing, Michigan**

April 10, 2007

Clifford W. Taylor,  
Chief Justice

ADM File No. 2002-37

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Maura D. Corrigan  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

Proposed New Rules 2E.001 *et seq.*  
of the Michigan Court Rules  
(Electronic Filing)

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On order of the Court, this is to advise that the Court is considering a proposal to adopt new rules regarding electronic filing in Michigan courts. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will be considered at a public hearing by the Court before a final decision is made. The notices and agendas for public hearings are posted on the Court's website, [www.courts.michigan.gov/supremecourt](http://www.courts.michigan.gov/supremecourt).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its current form.

[The language that follows is new.]

Subchapter 2E.000 Applicability; Construction

Rule 2E.001 Applicability; Citation

The rules in this chapter govern the electronic filing and service of documents in all courts established by the constitution and laws of the State of Michigan, and may be referred to as "e-filing rules." Citation for these rules is governed by MCR 1.101.

Rule 2E.002 Definitions

For purposes of this chapter:

- (A) "Authorized user" means a party or a party's attorney who is registered pursuant to Rule 2E.004 and who has satisfied any requirements imposed by the court relating to electronic filing and service procedures.
- (B) "Electronic filing" or "e-filing" means the completed electronic transmission of documents to the court and from the court.

- (C) “Electronic filing plan” means a plan prepared by a court in a form approved by the state court administrator addressing the electronic filing and service of documents in that court.
- (D) “Electronic filing service provider” means a court, or vendor with court approval, that provides for the electronic service of documents through the Internet.
- (E) “Electronic service” or “e-service” means the electronic transmission of documents to a party, a party’s attorney, or a party’s representative. Unless otherwise expressly authorized by a court, electronic service does not include service of process or summons to gain jurisdiction over persons or property.
- (F) “Public access terminal” means a publicly accessible computer terminal maintained at or by the court at which documents may be filed or served under this chapter and on which public court records may be viewed.

#### Rule 2E.003 Scope

- (A) A court whose electronic filing plan has been approved by the state court administrator may do any of the following, consistent with the rules of this chapter:
  - (1) Accept electronic filing and permit electronic service of documents, except as prohibited by Rule 2E.003(B);
  - (2) Issue electronic filing guidelines consistent with this chapter. The guidelines must be posted prominently on the court’s electronic filing portal;
  - (3) Mandate electronic filing and electronic service of documents in specified cases;
  - (4) Electronically issue, file, and serve notices, orders, opinions, and other documents, subject to the provisions of these rules.
- (B) Unless expressly authorized by a court, the following documents may not be electronically filed or electronically served:
  - (1) Documents that are sealed by a court under MCR 8.119(F);
  - (2) Case evaluation awards, acceptances, and rejections;

- (3) Documents for in camera review;
- (4) Documents that have access restricted by statute, court rule, or court order.

If a court expressly authorizes the filing of such documents, specific requirements regarding service must be completed as prescribed by the court, such as redacting confidential information.

#### Rule 2E.004 Authorized Users

- (A) Only authorized users may engage in electronic filing or service. To become an authorized user, a person must complete registration with an electronic filing service provider and the electronic filing service provider must approve the person's registration.
- (B) A court may revoke user authorization for good cause as determined by the court, including but not limited to a security breach or failure to comply with system requirements.
- (C) An authorized user must notify the court and the electronic filing service provider of any change in the authorized user's firm name, delivery address, telephone number, fax number, e-mail address, or other required registration information. This notice must occur as soon as practicable but no later than 7 days after the effective date of the change.

#### Rule 2E.005 Service Fees

Service fees approved by the court may be assessed by an electronic filing service provider.

#### Rule 2E.006 Signatures

- (A) A pleading, document, or instrument electronically filed or electronically served under this chapter shall be deemed to have been signed by the judge, court clerk, attorney, or declarant.
- (B) Documents containing signatures of third parties (i.e., affidavits, stipulations, etc.) may also be filed electronically by indicating that the original signatures are maintained by the filing party. Signed copies shall be provided to the parties or court upon request.

#### Rule 2E.007 Retention of Documents

Unless otherwise ordered by the court, copies of all documents filed or served electronically under this chapter shall be maintained by the party filing those documents and shall be made available, upon reasonable notice, for inspection or copying. Parties shall retain such copies until final disposition of the case and the expiration of all appeal opportunities.

#### Rule 2E.008 Transmission Failures

- (A) In the event of a transmission failure, a party may file a motion requesting that the court enter an order permitting a document to be deemed filed *nunc pro tunc* on the date it was first attempted to be sent electronically. The moving party must prove to the court's satisfaction that:
- (1) the transmission was attempted at the time asserted by the party;
  - (2) the transmission failed because of the failure of the electronic filing service provider to process the electronic document; and
  - (3) the transmission failure was not caused, in whole or in part, by any action or inaction of the party.

#### Subchapter 2E.100 Electronic Filing

##### Rule 2E.101 Time and Effect

- (A) A pleading filed electronically shall be considered filed with the court when the transmission to the electronic filing service provider is complete. The court's e-filing plan must state the time by which transmissions must be completed to be considered filed by the close of business on that day.
- (B) If the court rejects a submitted document pursuant to court rule, the court shall notify the filer of the rejection and the document shall not become part of the official court record.

##### Rule 2E.102 E-filing Transaction Receipt

Upon completion of an electronic filing transmission to an electronic filing service provider, the electronic filing service provider shall issue to the authorized user and to the court a transaction receipt that includes the date and time of the transmission, and the size of the transmission.

### Rule 2E.103 Electronic Case File

The court may maintain the official case file in electronic format, if it is able to conform to the retention period required in General Schedule 16.

### Rule 2E.104 Payment of Filing Fees

- (A) Authorized users may pay filing fees electronically through an electronic filing service provider.
- (B) A filing fee is due and payable at the time of the transmission of the electronic document unless the fee is waived by the court pursuant to court rule. Failure to timely pay a filing fee may result in the rejection of the filing by the court.

### Rule 2E.105 Public Access Terminals

When an e-filing system becomes mandatory for some or all cases in a court, that court must provide a public access terminal that is available during the hours the court is open to enable electronic filings in conformity with this chapter.

## Subchapter 2E.200 Electronic Service

### Rule 2E.201 General Provisions

- (A) Except as prohibited by Rule 2E.003(B), if authorized by the court, service of process may be accomplished electronically among authorized users through the electronic filing service provider.
- (B) Delivery of documents through the electronic filing service provider in conformity with these rules and any applicable court order shall be considered valid and effective service.

### Rule 2E.202 Time and Effect

A document served electronically through an electronic filing service provider in conformity with all applicable requirements of this chapter shall be considered served when the transmission from the electronic filing service provider to the recipient's e-mail address is complete, except that for the purpose of computing time to respond, a document filed or served after 5:00 p.m. local court time shall be deemed to have been served on the next day that is not a Saturday, Sunday, or legal holiday.

## Rule 2E.203 E-Service Transaction Receipt

Upon completion of an electronic service transaction, the electronic filing service provider shall issue to the authorized user and to the court a transaction receipt that includes the date and time of service. The transaction receipt serves as proof of service.

Staff Comment: In May 2003, this Court adopted an order authorizing several e-filing pilot projects in trial courts, and instructed that an e-filing subcommittee be formed within the Technical Advisory Group (TAG). The subcommittee drafted rules, which were then adopted by the TAG. This proposal is drafted substantially as adopted by the TAG.

Under the proposed rules, an authorized user would file documents with an electronic filing service provider. The draft rules require a court to submit a plan to State Court Administrative Office for approval before implementing an e-filing system. Specified documents would not be allowed to be transmitted, unless expressly authorized by the court.

In the event of transmission failure, the draft rules would allow a party to file a motion with the court asking that the document be deemed filed *nunc pro tunc* on the date it was first attempted, if the failed transmission was not the filing party's fault. Upon completion of an electronic filing transmission, the electronic filing service provider must issue a receipt to the authorized user that records the date and time of transmission.

Courts would be allowed to maintain the official case file in electronic format under the proposal. Filing fees would be required to be paid at the time of transmission unless the fee is waived by the court. Further, a court that accepts electronic filings would be required to provide a public access terminal to enable electronic filings.

Service of process would also be authorized under the subcommittee's draft rules. Electronic service is defined in the draft rules as "the electronic transmission of documents to a party, an attorney, or a party's representative." However, such service does not include service of process or summons to gain jurisdiction, unless expressly authorized by the court.

This staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201.

Comments on this proposal may be sent to the Supreme Court Clerk in writing or electronically by August 1, 2007, at P.O. Box 30052, Lansing, MI 48909, or [MSC\\_clerk@courts.mi.gov](mailto:MSC_clerk@courts.mi.gov). All comments will be posted on the Court's website. When submitting a comment, please refer to ADM File No. 2002-37.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 10, 2007

Corbin R. Davis  
Clerk